



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2003 Assembly Bill 709

Assembly Amendment 1

Memo published: February 27, 2004

Contact: Philip G. Cardis, Staff Attorney (267-0683)

2003 Assembly Bill 709 relates to the confidentiality of pupil records and the exchange of information between a pupil's school, the juvenile justice system, and law enforcement agencies. This memorandum provides a brief description of Assembly Amendment 1 to Assembly Bill 709, which relates to juvenile records.

Generally, under **current law**, law enforcement officers' records of juveniles are confidential and may only be disclosed in limited situations as provided in the statutes. A person who is denied access to juvenile records under those statutes may petition the court to order disclosure of the records. Upon receipt of a petition, the court must notify the juvenile, the juvenile's attorney, the juvenile's parents, and appropriate law enforcement agencies of the petition. If a notified person objects to the disclosure, the court may hold a hearing to take evidence relating to the petitioner's need for disclosure. Current law requires a court to inspect the juvenile's records. If the court determines that the information sought is for good cause and that it cannot be obtained with reasonable effort from other sources, the court must then determine whether the petitioner's need for the information outweighs society's interest in protecting the information's confidentiality. In making this determination, the court is required to balance the following private and social interests:

1. The petitioner's interest in recovering for the injury, damage, or loss he or she has suffered against the juvenile's interest in rehabilitation and in avoiding the stigma that might result from disclosure.
2. The public's interest in the redress of private wrongs through private litigation against the public's interest in protecting the integrity of the juvenile justice system.

If the court determines that disclosure is warranted, it must order the disclosure of only as much information as is necessary to meet the petitioner's need for information. The court must record the reasons for its decision to disclose or not disclose the juvenile's records. Records relating to such a decision are confidential.

Generally, the above procedure applies to, among others, school officials who are denied access to juvenile law enforcement records under the statutes.

Assembly Amendment 1 establishes an alternative procedure to that described above applicable to school officials seeking information in a juvenile's law enforcement records relating to the use, possession, or distribution of alcohol or drugs by the juvenile; the illegal possession of a dangerous weapon by the juvenile; whether the juvenile was taken into custody upon the belief that the juvenile was committing or committed a violation of state or federal criminal law; or acts for which a juvenile was adjudged delinquent. Under the amendment, when school officials are denied access to such records, they may file a petition with the court, and the court must, ***without notice or hearing***, inspect the record and make a determination on whether the record should be released. In making the determination, the court must use the balancing required under current law but must also consider one other balancing consideration. Under the amendment, when school officials are seeking the above-described information about a juvenile, the court must balance the petitioner's legitimate educational interests, including safety interests, in the information against society's interests in protecting its confidentiality. If the court determines that disclosure is warranted, the amendment requires the court to order disclosure. The amendment then requires the petitioner to provide a copy of the disclosure order to the law enforcement agency that denied access to the record, the juvenile, the juvenile's counsel, and the juvenile's parents. Any of those persons may obtain a hearing on the court's determination by filing a motion to set aside the disclosure within 10 days after receipt of the order. If no motion is filed within those 10 days or if, after hearing, the court determines that no good cause has been shown for setting aside the order, the law enforcement agency must disclose the juvenile's records as ordered.

The provisions of Assembly Amendment 1 first apply to a law enforcement record to which access is denied on the effective date of the bill.

Legislative History

On February 25, 2004, the Assembly adopted Assembly Amendment 1 on the floor by a voice vote. The Assembly passed the bill, as amended, by a vote of Ayes, 96; Noes, 0.

PGC:jal